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AGRICULTURAL EASEMENT PROGRAM FOR THE PRIMARY ZONE OF THE DELTA

DEFINITION, STATEMENT OF NEED AND INITIAL, PROPOSED SCOPE OF PROGRAM

(4/25/08 by Suzanne Butterfield, DPC staff, with major assistance from the California Department of Food and Agriculture)

DEFINITION (from Wikipedia with a few changes...)

The definition of a conservation easement is "a transfer of usage rights which creates a legally enforceable land preservation agreement between a landowner and a municipality or a qualified land protection organization (often called a "land trust"), for the purposes of conservation. It restricts real estate development, commercial and industrial uses, and certain other activities on a property to a mutually agreed upon level. The decision to place a conservation easement on a property is strictly a voluntary one where the easement is sold or donated. The restrictions, once in place, "run with the land" and are binding on all future landowners (in other words, the restrictions are perpetual). The restrictions are spelled out in a legal document that is recorded with the county recorder and the easement becomes a part of the chain of title for the property."

STATEMENT OF NEED

The land development threat to long term agricultural production in the primary zone of the delta is the parcelization of land for rural residential ranchette development. The ability to farm large blocks of land is interfered with when houses are built in the midst of agricultural land; e.g., ranchettes can become sources of weeds, pests and disease, and can interfere with agricultural operations such as spraying and dust-generating cultivation. Easement zones will minimize the checkerboard problems with non-agricultural uses. Land parcelization can also be a threat to habitat conservation for federal and state listed species in the delta. It can also interfere with cost effective flood plain management. Such parcelization also increases land values and fragments the landscapes, making it difficult for entry growers or growers needing to expand their operations. There are five delta counties each allowing parcelization of agricultural land in the primary zone to one degree or another.

While all would agree that agricultural conservation easements are only one tool in the toolbox of policies and programs to sustain agriculture, when combined strategically with local, regional or state land use policies and regulations to protect, promote and sustain agriculture, the effectiveness of the easement tool is increased. The land use policies and regulations affecting agricultural land can make farming more costly and complex. While regulatory reform is needed to remove barriers to sustainable farming,

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conservation easements can help by providing certainty to agricultural and conservation organizations that assist growers with incentives and assistance in complying with regulations. The cash influx from a conservation easement payment, itself, can be an incentive for an agricultural landowner to stay in the business of farming.

While awareness of such hazards to building homes in the delta as sea level rise, and the likelihood that not every levee that breaches will be rebuilt with public funds is higher now than in the past, real estate markets indicate that there remains significant interest in home building in the delta. Increased development in the secondary zone of the delta in turn puts pressure on the primary zone as more people live closer to the delta.

Why is agricultural land in the primary zone of the delta so important that public funds should be expended to keep development pressures off it? The simple answer is that large blocks of contiguous, high quality agricultural land exist in the delta which is a resource of great value to the State of California. Couple this with the fact that habitat for threatened and endangered species (according to the Bay Delta Conservation Plan and the five delta counties Habitat Conservation Plans) is needed. Even with sea level rise, there will be lands that are both high quality for agricultural use, high quality for habitat and will be above the expected sea level.

A delta-wide agricultural easement program can be instrumental in promoting a multi-functional working landscape in the delta, achieve multiple Delta Vision goals or recommendations. An agricultural easement program coupled with, or coordinated with, habitat easement and floodplain corridor protection programs could facilitate the creation of such a working landscape consistent with local land use and zoning policies, as well as the Blue Ribbon Task Force's Delta Vision recommendations. Such an approach could also be attractive to agricultural landowners seeking alternative sources of income streams for the agricultural management of their lands. The approach would also be a wise use of public funds.

Some believe that the Delta Protection Act provides protection against the conversion of agricultural land in the Primary Zone to non-agricultural uses. This is not the case. While the Act provides a measure of protection if the proposed non-agricultural use is found inconsistent with the Delta Protection Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta and is remanded back to local government by a majority vote of the Commission , permanent protection of agricultural land is not provided by the Act.

A PROPOSED AGRICULTURAL EASEMENT PROGRAM (for comment by stakeholders)

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An agricultural easement program is needed to assist in the achievement of the Delta Vision Recommendations that are designed to be an integrated solution to the myriad problems of the delta.

The following recommendations of the Delta Vision Blue Ribbon Task Force can be aided by an agricultural easement program that is coordinated with floodplain management objectives and habitat conservation objectives:

- 1. Delta ecosystem and a reliable water supply for California are the primary, co-equal goals for sustainable management of the delta.*
- 2. The California Delta is a unique and valued area, warranting recognition and special legal status for the State of Ca.*
- 3. The Delta ecosystem must function as an integral part of a healthy estuary.*
- 11. Discouraging inappropriate urbanization of the Delta is critical both to preserve the Delta's unique character and to ensure adequate public safety.*

Near Term actions to Protect the Delta:

- 1. State government should immediately begin acquiring title or easements to floodplains, establish flood bypasses where feasible and discourage residential building in flood-prone areas. Land that could provide flood protection is being threatened by urban development as this report is being written.*
 - 2. The Governor should immediately issue an Executive Order that provides guidance consistent with this vision on inappropriate land development in the Delta.*
 - 6. High priority ecosystem revitalization projects should be pursued aggressively by the responsible agencies and departments, upon direction by the Governor.*
- A delta-wide agricultural easement program with a focus on reducing the parcelization (or lot splitting) of land in the primary zone of the Delta for the building of houses, coordinated with floodplain management and habitat restoration objectives, should be collaboratively developed by all appropriate stakeholders, consistent with the Recommendations of the Delta Vision Blue Ribbon Task Force and policies of the State of California for protecting high quality agricultural farmland.
 - The following government agency and non-profit plans, policies and programs need to be consistent with a delta-wide agricultural easement program and vice-versa: the Delta Protection Commission's planned update of its Land use and Resource Management Plan for the Primary Zone of the Delta; the Agricultural policies and

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land development policies of the five delta counties; the flood plain management policies and programs of the State and the five delta counties; BDCP and the five counties HCP and /or NCCP Plans; The California Department of Conservation's Farmland Protection Program; the California Department of Food and Agriculture's Agricultural Plan for the State , which is currently in the early stages of formulation.

- Initial ideas (most came from publications of the UC Davis Ag Issues Center and the American Farmland Trust) on the major criteria or parameters for prioritizing land for agricultural easement candidates in the Delta:
 1. Focus on the Primary Zone of the Delta (Should a separate set of criteria for targeting the application of easements in the Secondary Zone be developed, based on the original intent of the Zone relative to the Primary zone?)
 2. Agricultural land quality which, in the Delta, will need to take into account depth of subsidence and costs of levee repair and maintenance.
 3. Irrigation water quality.
 4. Contiguity to other Protected Lands/Strategic location (ability to enhance farmland preservation in a larger area) /Development Proximity (this can either be a positive or negative criterion, depending on whether location to development is a preservation asset or liability).
 5. Threat(Urgency) or Potential of development.
 6. Active (viable) agricultural use or land not in use, but with potential for productive agricultural use with few constraints.
 7. Parcel Size (based on input from County Agricultural Commissioners and others with expertise, such as lenders and UCCE).
 8. Natural Resource for habitat/historic Value.
 9. Natural resource for flood management.
 10. Willingness to change or continue farm management that is environmentally and economically sustainable and uses soil and water conservation practices and other best management practices that support diversified farming as well as practices that are compatible with farming and also with flood plain management and the integration of wildlife habitat restoration.
 11. Planning compatibility; prioritizes easements in locations where local land use planning and regulation support continued agricultural production.

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- The top criteria used by many agricultural easement programs in the US are: location/geographical targeting, contiguity to other protected lands, development threat, agricultural quality, viable agricultural use.
- Minimum requirements are important filters to include or exclude parcels from final sorting process.
- Some programs rank parcels for funding rather than accept/reject
- Many quantitative ranking systems were originally based on LESA (land evaluation and site assessment program) created by the NRCS and USDA- professes to take process of determining the relative merits of preserving or converting farmland out of the realm of local politics, by relying on site-specific soil, land-use and policy attributes of the land and its environs conducive to profitable farming.
- Basic principles for designing a selection system; Choosing criteria (how many – on average quantitative programs use 14 different criteria apiece); Strict or loose minimums? (Oftentimes the critical step in the selection process)
- Designing an acquisition strategy
 1. Select committee members of a cross section of knowledge
 2. Program should have clearly stated purpose, honest and clear objectives
 3. Create a transparent and defensible process for parcel selection
 4. Incorporate all state, local and other legislative requirements
 5. Select acquisition standards and criteria that will best direct efforts to meet identified goals/objectives
 6. Test the selection criteria/strategy
 7. Design a flexible system that can be adjusted as needed
 8. Look at existing programs (of land trusts operating in the delta) for parcel selection models and acquisition strategies that reflect common and unique characteristics of their jurisdiction.

POSSIBLE DEFINITION OF A CALIFORNIA DELTA AGRICULTURAL EASEMENT PROGRAM

This proposed program will be developed through a collaborative process of discussion among the Land Trusts in the Delta; the five delta counties' land use planners, habitat conservation planners, floodplain managers and agricultural commissioners; the American Farmland Trust; the American Land Conservancy; the Delta Protection

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Commission; the California Department of Conservation; the California Department of Food and Agriculture; the California Department of Water Resources; and landowner and other stakeholder input. The Delta Agricultural Easement Program shall offer financial incentives to willing agricultural landowners to sell or donate their development rights in order to achieve the goals of Delta Vision. The agricultural lands with the highest priority for purchase of development rights will be those with the highest quality of agricultural land and other positive agricultural attributes, that also have habitat values and floodplain management value and are threatened by rural land development.

ACTIVE OR PASSIVE APPROACH?

A fundamental question in thinking about what the scope of a delta-wide agricultural easement concept should be is whether it is envisioned as a passive approach (provide coordinated input to existing entities, perform research etc) or active approach (recommend new agricultural easement program for the primary zone of the delta) . How should a delta-wide agricultural easement approach interface with the entities that are already in, or have an influence on land/easement acquisition in the Delta (ie the land trusts , the county HCP/NCCP responsible agencies, BDCP, Department of Conservation, the state agencies with bond funds for purchasing easements for floodplains, agricultural conservation, habitat, or a potential new governance structure such as a Delta Conservancy).